

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Whirley et al.

Examiner: Thomas Sweet

Application No.: 10/769,532

Group Art Unit: 3774

Filed: January 30, 2004

Docket: 1880-17 RCE III

For: INFLATABLE POROUS IMPLANTS AND
METHODS FOR DRUG DELIVERY

Dated: March 1, 2010

Confirmation No.: 8638

Mail Stop Appeal Brief- Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Certificate of EFS-Web Transmission

I hereby certify that this correspondence is being transmitted
to the U.S. Patent and Trademark Office via the Office's
electronic filing system.

Dated: March 1, 2010

Signature: Marcy Mancuso/



RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

Sir:

In response to the Notification of Non-Compliant Appeal Brief mailed on January 29, 2010, submitted concurrently herewith is an amended Appeal Brief. As the Notification of Non-Compliant Appeal Brief does not state that it only requires submission of the corrected section, the entire Appeal Brief as amended is being filed concurrently herewith.

In the Continuation Sheet (PTOL-462) accompanying the Notification of Non-Compliant Appeal Brief, it was indicated that the Appeal Brief is defective based on Section IV which states "In response to the final rejection mailed May 22, 2009, a Notice of Appeal was filed on August 21, 2009 without further amendments or arguments." In this regard, the Office Communication

Applicants: Whirley et al.
Application No: 10/769,532
Response to Notification of Non-Compliant Appeal Brief dated March 1, 2010
Docket No.: 1880-17 RCE III
Page 2

notes that an after final argument dated July 22, 2009, appears in the file and that an Advisory Action was mailed on August 12, 2009.

With reference to the amended Appeal Brief which is being submitted concurrently herewith, a reference to the Amendment and Response to Final Office Action of July 22, 2009, and a reference to the Advisory Action of August 12, 2009, are set forth at page 2 of the amended Appeal Brief. In particular, Section IV entitled "Status of Amendments" as set forth in the amended Appeal Brief indicates that an Amendment and Response to Final Office Action (which was a request for reconsideration of the claims) was filed on July 22, 2009, in response to the final Office Action mailed on May 22, 2009. Moreover, Section IV as set forth in the amended Appeal Brief indicates that the "request for reconsideration" was considered by the Examiner but was deemed by the Examiner not to place the application in condition for allowance. Also, as this amended Appeal Brief is being filed on March 1, 2010, the phrase "thus making this Appeal Brief due October 21, 2009" has been deleted from the introductory paragraph on page 1 of the amended Appeal Brief. In all other respects, the amended Appeal Brief is identical to the Appeal Brief filed on October 21, 2009.

For the sake of accuracy on the record, Appellants note that although the submission which was filed on July 22, 2009, was entitled an Amendment and Response to Final Office Action, no amendments to the claims were presented by way of that submission. Accordingly,

Applicants: Whirley et al.
Application No: 10/769,532
Response to Notification of Non-Compliant Appeal Brief dated March 1, 2010
Docket No.: 1880-17 RCE III
Page 3

contrary to the indication in the Notification of Non-Compliant Appeal Brief, no amendments were filed subsequent to the final rejection.

As February 28, 2010, fell on a Sunday, this Response and the accompanying amended Appeal Brief are timely filed on March 1, 2010. As such, it is respectfully submitted that no fee is occasioned by these submissions. However, if a petition for an extension of time is required, Appellants hereby respectfully request the requisite extension of time needed and request that the fee for the extension of time be charged to Deposit Account No. 08-2461. Moreover, if any other fees are deemed due, please charge Deposit Account No. 08-2461. The requisite fee of \$540.00 for submission of the Appeal Brief was previously paid on October 21, 2009.

Favorable action is earnestly submitted. If there are any questions, or if additional information is required, please contact the undersigned at the number listed below.

Respectfully submitted,



Andrea M. Wilkovich
Registration No.: 53,773

HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset, New York 11791
(973) 331-1700